IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

THURSDAY, THE 14TH JUNE 2007 / 24TH JYAISHTA 1929

WP(C).No. 18324 of 2007(F)

PETITIONER:

V.K.SREENIVASAN, 'SANTHI NIVAS',
35/1425, KALATHIPARAMBIL ROAD, ERNAKULAM,
KOCHI-682 016.

BY ADV. SRI.KMV.PANDALAI

RESPONDENTS:

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1. ASSISTANT COMMISSIONER OF INCOME TAX,
INVESTIGATION CIRCLE, ERNAKULAM.

2. THE INCOME TAX APPELLATE TRIBUNAL,
ERNAKULAM BENCH, 'KENDRIYA BHAVAN, KAKKANAD,
ERNAKULAM.

BY SC SRI. GEORGE K GEORGE

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 14/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

C.N.RAMACHANDRAN NAIR,J.

W.P.C. NO. 18324 OF 2007

Dated this the 14th day of June, 2007

JUDGMENT

Petitioner is challenging Exts. P10 and P12 orders issued by the Tribunal declining to interfere with Ext.P6 order in appeal issued by the Tribunal on 9.6.1997. It is seen that petitioner had filed two Income-tax Appeals for the years 1979-80 and 1981-82. Inspite of repeated notices, petitioner did not turn up before the Tribunal and therefore Tribunal heard the departmental representative, considered the case on merits and decided all the issues raised in appeal. It is seen from Ext.P6 that Tribunal has granted some relief to the petitioner also. Petitioner's case is that Tribunal never served copy of order in appeal on the petitioner. However, petitioner has filed application for rehearing the appeal again which was rejected by the Tribunal vide Ext.P10 order. Against Ext.P10 fresh petition was filed stating that there was no delay in filing application and therefore earlier order, namely, Ext.P10 should be vacated. This application was also rejected by Ext.P12 which is under challenge in this W.P.C.

2. I heard counsel for the petitioner and standing counsel appearing for the department. It is seen from Ext.P12 that Tribunal has rejected application which is a rectification application because of the inordinate delay in filing it, that is more than four years from the date of passing of the order in appeal. I am unable to accept the petitioner's contention that order in appeal was never issued to the petitioner because petitioner himself admitted receipt of the same and filed application before the Tribunal with a delay condonation petition. Therefore Tribunal cannot be held to be wrong in rejecting the applications filed on account of inordinate delay because Tribunal has no powers to entertain petitions filed with several years of delay. Even so far as merits are concerned, I find Tribunal has inspite of non-appearance of petitioner considered the case on merits based on grounds raised in appeal and after perusing records partly allowed the appeals. It was open to the petitioner to file appeal to the High Court under Section 260A of the Income Tax Act against the order in appeal issued by the Tribunal as Ext.P6. In the circumstances, W.P. is de void of any merit and is dismissed.

(C.N.RAMACHANDRAN NAIR)
Judge